

This is a claim for a January 7, 1996 accident. Claimant was initially awarded an 8 percent permanent partial general disability. Because his symptoms have allegedly worsened, claimant now requests additional medical treatment and a doctor other than Dr. Stein to provide that treatment.

On August 25, 1998, the Judge conducted a hearing to consider claimant's request, and denied that request, stating that Dr. Stein would continue to be the authorized doctor. Additionally, the Judge ordered respondent to pay \$250 for claimant's attorney fees.

Respondent and its insurance carrier contend the Judge erred by ordering payment of the attorney fees. They contend the fees are discretionary and that they should not be burdened with them as they have allegedly conscientiously complied with the initial Award. Conversely, claimant contends the applicable version of the post-award attorney fees statute, K.S.A. 44-536(g), mandates an award of fees as the amendment making the fees discretionary did not take effect until July 1, 1997. Claimant also contends a reasonable fee would be more than the amount awarded.

The only issues before the Board on this appeal are whether claimant should be granted an award of attorney fees in this application for post-award medical treatment, and, if so, how much?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. This is a claim for a January 7, 1996 accident. The claim was initially decided on June 27, 1997, and Mr. Stokes was awarded benefits for an 8 percent permanent partial functional impairment.
2. Mr. Stokes now requests additional medical treatment as his symptoms have allegedly worsened and he is having difficulty performing his job with Waste Management.
3. At the insurance carrier's request, Dr. Philip R. Mills evaluated Mr. Stokes in June 1998. Dr. Mills' report, which was introduced into evidence at the August 1998 hearing, indicates that Mr. Stokes has a chronic pain syndrome, a bulging cervical disc, and depression. The doctor believes Mr. Stokes' prognosis is guarded but he does not recommend either additional consultation or treatment.
4. Other than Mr. Stokes' testimony that Dr. Stein refused to examine him and that Dr. Stein has no additional treatment to offer, Dr. Mills' medical report is the only new medical evidence that was presented to the Judge for consideration.

CONCLUSIONS OF LAW

1. The award of \$250 in attorney fees should be affirmed.

2. The Workers Compensation Act provides that a worker's attorney may be entitled to receive fees from the employer and its insurance carrier for services rendered seeking additional medical treatment after the initial award.¹

3. Mr. Stokes' request for a treating physician other than Dr. Stein, who is a neurological surgeon, was not unreasonable as Dr. Stein previously determined that surgery was not indicated and that he has no treatment recommendations.

4. Considering the evidence presented, the legal services provided, and the time that Mr. Stokes' attorney expended in providing those services, the Judge found that \$250 was reasonable. The Board adopts the Judge's conclusion.

AWARD

WHEREFORE, the Appeals Board affirms the August 25, 1998 award of attorney fees entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
John David Jurcyk, Lenexa, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-536(g); *also see*, Williams v. Koch Services, Docket No. 196,562 (Oct. 1998), which held that the 1997 amendments to K.S.A. 44-536(g) were procedural.